

The Hotel Operators' Tax provides no exemption for the rental of rooms to governmental entities. See 86 Ill. Adm. Code 480.101. (This is a GIL.)

January 9, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 31, 2005, in which you request information. We apologize for the delay in responding to your inquiry. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I was told to communicate with you and your Department regarding the above referenced issue.

ABC is a federally-chartered Credit Union under the Federal Credit Union Act. As such it is the beneficiary of that part of the Act reading:

12 USC § 1768. Taxation

The Federal credit unions organized hereunder, their property, their franchises, capital, reserves, surpluses, and other funds, and their income **shall be exempt from all taxation now or hereafter imposed by the United States or by any State, Territorial, or local taxing authority**; except that any real property and any tangible personal property of such Federal credit unions shall be subject to Federal, State, Territorial, and local taxation to the same extent as other similar property is taxed. Nothing herein contained shall prevent holdings in any Federal credit union organized hereunder from being included in the valuation of the personal property of the owners or holders thereof in assessing taxes imposed by authority of the State or political subdivision thereof in which the Federal credit union is located; but the duty or burden of collecting or enforcing the payment of such a tax shall not be imposed upon any such

Federal credit union and the tax shall not exceed the rate of taxes imposed upon holdings in domestic credit unions.

We are booking sleeping rooms and meeting rooms at the HOTEL in CITY for a business event this April. All charges, including the sleeping rooms, will be under a master account arrangement with the hotel and will be paid directly by ABC after the event.

The hotel insists that, under compulsion from the IDOR, it must assess, collect and remit to your agency 'hotel taxes' against ABC. We think that they are wrong.

They have provided me with the IDOR's Publication 106, which I have read, but I cannot understand the position taken by the IDOR therein, in light of the clear language of the above Act of Congress. Publication 106 makes fairly clear that it is intended that the incidence of the hotel tax fall on the customer of the hotel, and in fact carves out exemptions for certain diplomats - customers of a hotel. I would believe that this issue has been fairly ruled on, in favor of the Credit Union exemption, in the case of California Credit Union League v. City of Anaheim, 190 F3d 997 (9th Cir. 1999). Be advised that I have also read an opinion letter from your Department dated March 15, 2001, making the argument that the incidence of the hotel tax does not fall on the hotel's customer, which hotel only voluntarily chooses to pass it through to that customer. This letter cites no case authority and fails to explain why the same argument cannot be made with regard to sales taxes. And the HOTEL has certainly not taken the position with ABC that it is choosing to pass through a cost of doing business - rather it says that its failure to assess the tax against ABC, and collect it from ABC, will expose it to a violation.

If you, or your Counsel, have any case authority to offer in opposition of ABC's position I request that you provide it to me. ABC reserves the right to bring an action for declaratory relief and/or pay the taxes under protest and bring suit to recover them.

DEPARTMENT'S RESPONSE:

As we have noted in the prior Department letter ruling you referenced, the Illinois Hotel Operators' Occupation Tax is imposed on the hotel operator and not the hotel's guests. As set out in subsection (a) of Section 3 of the Hotel Operators' Occupation Tax Act, "[a] tax is imposed upon persons engaged in the business of renting, leasing, or letting rooms in a hotel at the rate of . . ." 35 ILCS 145/3. Subsection (e) of that same section states, "[p]ersons subject to the tax imposed by this Act may reimburse themselves for their tax liability under this Act, by separately stating such tax as an additional charge, . . ." 35 ILCS 145/3.

The Department's position remains that the Hotel Operators' Occupation Tax is only imposed on the hotel operator and not the hotel's guests. The reimbursement of the amount of tax paid by the hotel operator is not a tax, nor does the state require the hotel operator to collect it from the hotel's guests. See 86 Ill. Adm. Code 480.101(a)(5). The decision to seek a reimbursement of these amounts from its guests is a business decision solely within the discretion of the hotel operator.

In regard to your argument regarding sales taxes, please see our prior letter ruling (ST-97-0061-GIL) on the Department's website regarding the application of Illinois Retailers' Occupation Tax and Use Tax to purchases by federal credit unions.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Terry D. Charlton
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TDC:msk